

FILED

SEP 07 2005

NOT FOR PUBLICATION
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

ECM, INC.,

Plaintiff - Appellant,

v.

PLACER DOME U.S., INC.; CORTEZ
GOLD MINES,

Defendants - Appellees.

No. 03-15896

D.C. No. CV-92-00499-ECR

MEMORANDUM*

Appeal from the United States District Court
for the District of Nevada
Edward C. Reed, District Judge, Presiding

Argued and Submitted June 13, 2005
San Francisco, California

Before: TALLMAN, BYBEE, and BEA, Circuit Judges.

Appellant ECM, Inc. ("ECM") appeals the entry of summary judgment in favor of Appellee Placer Dome U.S. ("PDUS"). The district court ruled that the

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disclosure provision of the lease agreement between ECM and PDUS's predecessor-in-interest did not run with the land and therefore did not bind PDUS.

We review a district court's grant of summary judgment *de novo*. *Buono v. Norton*, 371 F.3d 543, 545 (9th Cir. 2004). Three elements define a covenant that runs with the land: 1) the original parties to the covenant must intend for the covenant to run; 2) the covenant must touch and concern the land; and 3) there must be privity of estate. *Wheeler v. Schad*, 7 Nev. 204, 208-09 (1871).

For reasons explained by the district court, we conclude that the disclosure provision did not touch and concern the land. The covenant therefore does not run with the land, and PDUS is not bound by it.

AFFIRMED.